

## **Financial Management Course 11 U.S.C. §§ 727 and 1328**

*The Act mandates that individuals filing under chapters 7 and 13 must complete an approved financial management course (subject to exceptions set forth below) in order to receive a discharge.*

The court shall not grant a discharge under § 727(a)(11) or § 1328 (g)(1) if the debtor fails to complete an approved post-petition instructional course concerning personal financial management. The debtor must file Official Form 23 to confirm that the financial management course has been completed. Filing a copy of the financial management course certificate is not an acceptable substitute for Official Form 23. In a joint chapter 7 case, both debtors must complete the financial management course and both must sign Form 23.

The list of agencies approved to conduct financial management courses is compiled by the United States Trustee (UST) and/or the Bankruptcy Administrator (BA).<sup>1</sup> These entities, and not the clerk, have sole responsibility for determining what is an “approved” financial management service. However, pursuant to 11 U.S.C. § 111(a), the clerk must maintain a publicly available list of approved financial management courses. Many courts fulfill this obligation by maintaining a link to the UST’s website on their own website. In addition, the clerk will not be responsible for ensuring that the financial management course was conducted by an approved service (an objection to this may be raised by the trustee or other third party).

There are specific exceptions to this financial management course requirement, including:

- if the debtor is unable to complete the financial management requirement as a result of incapacity or disability; or
- if the debtor is on active military duty in an active combat zone; or
- if the UST or BA has determined that adequate financial management services are not available in the district.

In order to ensure compliance, a court could either set a deadline for the filing of Official Form 23 or send a reminder notice to the debtor regarding the financial management requirement, possibly after the period for objection to discharge has expired.

- A private flag can be incorporated into the Auto-Discharge program so that the discharge is not issued unless Form 23 is filed.
- If the debtor fails to submit Form 23, the court should close the case without the

---

<sup>1</sup> The lists of approved Financial Management Courses can be found at <http://www.uscourts.gov/bankruptcycourts/debtors.html>.

- discharge being granted.
- Courts should use the Discharge Not Applicable statistical code to indicate that the case was closed without a discharge being granted (as opposed to “discharge denied”).)
- Pursuant to Interim Rule 4006, the clerk must send a notice of no discharge to all creditors.
- The debtor can subsequently move to reopen the case to file official Form 23 and to request that the discharge be granted. The debtor must pay the reopening fee in this situation. In order to resolve any ambiguity, during its September 2006 session, the Judicial Conference amended Item 11 of the Bankruptcy Court Miscellaneous Court Fee Schedule to expressly state that the fee applies to a request to reopen a case in which the court did not enter a discharge.<sup>2</sup>
- If a case converts to a chapter 7 or 13, the debtor must complete the financial management course in order to receive a discharge.

---

<sup>2</sup> The exception to the reopening fee that exempts the debtor from paying the fee if the debtor's action was related to the discharge is not applicable because no discharge was granted. That exception is only intended to cover two situations relating to the discharge -- one, when a case is reopened for a party to file a complaint to obtain a determination under Rule 4007(b), or two, when a creditor is violating the terms of the discharge.